



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.22592 of 2021

and

W.M.P(MD) Nos.19108 and 19109 of 2021

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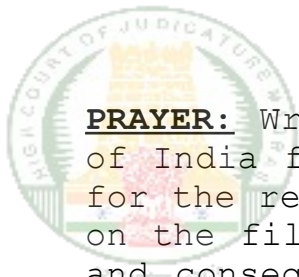
A.C.Thirumurthy

... Petitioner

vs.

- 1.The Registrar of Co-operative Societies,
Office of the Co-operative Societies,
170, EVR Salai, Kilpauk,
Chennai-600 010.
- 2.The Managing Director,
Tiruchirappalli District Central Co-operative Bank,
No.1, Fort Station Road,
Tiruchirappalli-620 002.
Tiruchirappalli District.
- 3.The Joint Registrar of Co-operative Societies,
Office of the Joint Registrar of Co-operative Societies,
Karur Region,
Additional Building,
Collectorate Complex,
Thathoni Malai,
Karur-639 007, Karur District.
- 4.The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operative Societies,
Karur Circule,
Additional Building,
Collectorate Complex,
Thathoni Malai,
Karur-639 007, Karur District.
- 5.The Enquiry Officer,
Under Section 81,
TY (SPL)11, Andipatti Primary Agricultural
Co-operative Credit Society,
Z.Alamarathupatti Post,
Pallapatti Via, Karur District 639 207.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice dated 08.12.2021 on the file of the fifth respondent and quash the same as illegal and consequently for a direction, directing the fourth respondent to conduct a separate enquiry under Section 81 against the petitioner in the light of the Circular issued by the first respondent vide RC.No.38614/2009 SF.2(1), dated 06.04.2009 and the judgment of this Court in W.P.No.7826 of 2018, dated 10.09.2018 within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
for Mr.T.Lajapathi Roy

For Respondents : Mr.S.Kameswaran
Government Advocate
(for R1, 3, 4 and 5)

M/s.D.Shanmugaraja Sethupathi
(for R2)

O R D E R

I do not think it would be of any benefit to either the petitioner more particularly to the second and fifth respondents, if this writ petition is kept pending on the file of this Court.

2.The writ petitioner claims privilege that he is an employee of the second respondent and that the second respondent has a duty to extend loan to other co-operative societies. The second respondent can be called the Central Co-operative Bank or a Society. Loans are received by other Primary Credit Co-operative Societies and in this case, loans had been sanctioned to the Andipatti Primary Agricultural Co-operative Credit Society. Allegations of misappropriation of the funds so disbursed as loan had arisen. In that connection, the fifth respondent/Enquiry Officer had issued notice, not only to those individuals against whom there were allegations of misappropriation but also to the petitioner herein. The petitioner seeks immunity on the ground that he is only a Secretary of the second respondent/District Central Co-operative Bank and therefore, he should be de-linked from the enquiry conducted against the employees of Andipatti Primary Agricultural Co-operative Credit Society.

3.The learned counsel placed reliance on a circular issued by the first respondent, dated 27.08.2018 in R.C.No.58290/2018/SF.4 (1).



4. Let me not enter into a deep discussion on the details. The impugned order is only a notice issued to the petitioner to participate in the enquiry. If the petitioner questions the locus of the enquiry officer or the authority of the enquiry officer, to conduct the enquiry or even to club the petitioner among those against whom he can conduct enquiry, it is only appropriate to permit the petitioner to put these aspects to the enquiry officer and the enquiry officer has to take a decision either to continue with the enquiry by including the petitioner as one of the delinquents or directing separate enquiry to be conducted as against the petitioner herein, in view of the circular referred by the petitioner. This is a decision which has to be taken only by the fifth respondent. This Court cannot step into the shoes of the fifth respondent and take a decision as to the manner in which enquiry should be conducted.

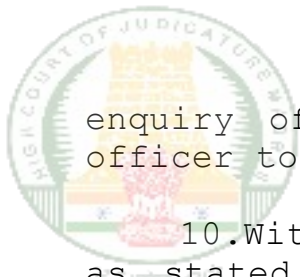
5. Judicial Review can never lie as against a notice inviting the petitioner to participate in an enquiry. If the procedure followed is not in accordance with settled principles of natural justice, then, judicial review may lie in very narrow circumstances. Even the decision taken by an enquiry officer cannot be called into question, unless, the petitioner is able to impress upon the Court that prejudice and bias had been exhibited against the petitioner herein during the entire course of enquiry. Here enquiry has not even commenced. A notice alone had been issued directing to the petitioner to be present on 15.12.2021.

6. The learned counsel for the petitioner stated that the petitioner did not appear but the enquiry had been postponed to some other date.

7. A direction is given to the petitioner herein to participate in the enquiry, produce any orders of Courts, which protects him from further participating in the enquiry, produce circulars which also gives such protection and invite the enquiry officer to take a considered decision whether to continue the enquiry with the petitioner or to de-link the petitioner and continue the enquiry with the other delinquents. It is a decision to be taken only by the enquiry officer and this Court cannot direct the manner in which an enquiry, particularly of misappropriation, should be conducted.

8. I find no merits in this writ petition and the same is dismissed.

9. However, I would give a liberty to the petitioner to raise all issues regarding the nature in which, the enquiry should be conducted, particularly, as against the petitioner before the



enquiry officer. I would also place a caveat on the enquiry officer to consider the same and pass on order accordingly.

10. With the said observations, the writ petition is dismissed as stated, giving such liberty to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

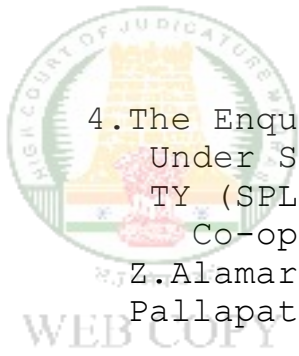
Sub Assistant Registrar (CS)

Sji

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Registrar of Co-operative Societies,
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170, EVR Salai,
Kilpauk,
Chennai-600 010.
2. The Joint Registrar of Co-operative Societies,
Office of the Joint Registrar of Co-operative Societies,
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Z.Alamarathupatti Post,
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+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-39784[F]
dated 21/12/2021)

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RK(31/12/2021) 5P 6C